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C.O. 1213 of 2021

Sandip Senapati
Versus
Tridip Senapati

(Via Video conference)

Mr. Pranit Bag,
Mr. Subhamay Dewanji,

... For the Petitioner.

Affidavit-of-service furnished by the petitioner
be taken on record.

Pursuant to the order dated September 1,
2021, a notice afresh was directed to be served
upon the opposite party as well as upon the learned
advocate appearing in the Court below with
intimation that the matter would be taken up for
hearing today.

None appears for the opposite parties
pursuant to the notice being given for the opposite
party.

The impugned order No. 37 dated 23rd March,
2021 passed by learned Civil Judge (Jr. Div.), 1st
Court, Serampore in Title Suit No. 38 of 2017
allowing application under Section 151 of the Code
of Civil Procedure, and thereby directing officer-in-
charge of Chanditala P.S. to look into the matter for
the implementation of the ad interim order of
injunction, is subject of challenge in this revisional
application.

Mr. Pranit Bag, learned advocate representing
the petitioner submits that the order of injunction

granted in this case has been obtained making suppression of facts, and some revealing facts could not be presented before the learned Court below at the time of making consideration of the police help under Section 151 of the Code of Civil Procedure, and as a result thereof, the order directing the police help has been erroneously decided, which requires to be interfered with.

Adverting to copy of the plaint of Title Suit No. 377 of 2016, being Annexure 'B' shown at page 22 of the instant revisional application, Mr. Bag contends that petitioners have been favoured with an ad interim order of injunction and thereby restraining the opposite party from making any kind of construction over the 'A' schedule property. It is thus contended by Mr. Bag that for the alleged violations of the ad interim order of injunction passed in Title Suit No. 38 of 2017, an appropriate application under Order 39, Rule 2A of C.P.C. ought to have been taken out for redressing grievance, expressed for the purpose.

Mr. Bag further submits that the order of injunction, passed in Title Suit No. 377 of 2016 by learned Civil Judge (Jr. Div), 1st Court, Serampore, needs to be disclosed before the Court below, so that Court can pass appropriate order upon rehearing the application filed for police help.

The situation is thus very clear that over the selfsame parties, there are two civil suits pending, one being Title Suit No. 377 of 2016 of learned Civil Judge (Jr. Div), 1st Court, Serampore and another is Title Suit No. 38 of 2017 of same Court. Parties are obviously the same in both the suits. In both the cases, there is ad interim order of injunction passed

by the learned Court below.

Upon perusing the impugned order, it appears that that the learned Court below has specifically observed that the instant application under Section 151 of the Code of Civil Procedure for police help had been filed by the opposite party/plaintiff in order to restrain the defendants from causing any violation of ad interim order of injunction, passed by the Court.

Thus, for the alleged violations of the injunction order, Section 151 of the Code of Civil Procedure has been invoked simply for ensuring police help without taking out any appropriate application under Order 39 Rule 2A of the Code of Civil Procedure.

When Mr. Bag candidly submits that petitioner wants to make complete disclosure of the facts including the order of injunction granted in his favour in Title Suit No 377 of 2016, the Court is of the view, that a chance should be given for hearing afresh of the prayer for police help under Section 151 of the Code of Civil Procedure.

The impugned order granting police help is set aside with a direction upon the learned Court below to rehear the application under Section 151 of the Code of Civil Procedure giving sufficient opportunity of hearing to both the parties, but without granting unnecessary adjournments, unless the same is extremely unavoidable.

The Court reposes confidence upon the learned Court below that a fresh hearing of the prayer for police help may be concluded within three months from the date of communication of this order.

Petitioner is directed to make communication of this order to learned court below as well as opposite party and his learned advocate appearing in the court below.

With these observations, and directions the revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Subhasis Dasgupta, J)